

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HYDRO LOGISTICS, INC.

and

JAMES M. JERARD, an Individual

Cases 3--CA--10534,
3--CA--11186,

WIZARD METHOD EMPLOYEES
INDEPENDENT UNION

3--CA--11147,

WIZARD METHOD, INC.

and

WIZARD METHOD EMPLOYEES
INDEPENDENT UNION

3--CA--11086--1,

RANDOLPH ROTELLA, an Individual

3--CA--11388, and

MIRACLE SALES AND SERVICE, INC.

and

3--CA--11086--2

WIZARD METHOD EMPLOYEES INDEPENDENT UNION

SUPPLEMENTAL DECISION AND ORDER REMANDING

By Chairman Stephens and Members Cracraft and Raudabaugh
On December 16, 1987, the National Labor Relations Board issued a

Decision and Order in this proceeding.¹ On March 6, 1990, the Second Circuit entered a judgment enforcing in full the backpay provisions of the Board's Order.² A controversy having arisen over the amount of backpay due the

¹ 287 NLRB 602.

² 897 F.2d 1233.

discriminatees under the Board's Order, the Regional Director for Region 3, on August 29, 1990, issued a compliance specification, exhibits, and notice of hearing alleging the amount of backpay due and the number and names of the discriminatees, and notifying the Respondents that they must file a timely answer complying with the Board's Rules and Regulations. By letter dated September 26, 1990, counsel for the General Counsel informed counsel for the Respondents that an answer to the compliance specification had not been filed within the time limit set forth in Section 102.56 of the Board's Rules and Regulations and advising him that a Motion for Summary Judgment would be filed with the Board pursuant to the Board's Rules and Regulations, if an answer were not received by October 5, 1990.

On October 5, 1990, the Respondent, Wizard Method, Inc., filed an answer to the specification.³ In the answer, the Respondent admits that the discriminatees are the persons named in paragraphs 2 and 5 of the specification, and admits the calendar quarters listed in paragraph 10 in which no backpay is owing because interim earnings exceeded gross backpay, but contends generally that those are not the only such quarters in which that occurred. In all other respects the Respondent generally denies the allegations set forth in the General Counsel's backpay specification, to which denials it adds certain assertions. The Respondent asserts that false premises were used by the General Counsel in calculating the base pay periods.⁴ The

³ We have treated Respondent Wizard's answer as applying both to itself and its alter ego, Respondent Hydro Logistics, Inc. Respondent Miracle Sales is not involved in this stage of the proceeding because no unfair labor practices were found to have been committed by it. In this decision we will refer collectively to Respondents Wizard and Hydro logistics as "the Respondent."

⁴ For example, the Respondent asserts that, in calculating backpay for the group of discriminatees in group A, the General Counsel used a base pay period which is undefined and may be inaccurate. We note that the base pay period for group A is fully defined in Exh. 1 affixed to the specification.

Respondent also asserts that the General Counsel's statements concerning the number of hours for which backpay is due are erroneous. The Respondent, however, offers no supporting evidence to substantiate its various asserted disagreements with the General Counsel, and alleges no alternative premises or figures. Similarly, in asserting error in the General Counsel's definitions of base pay periods, the Respondent offers no alternative definitions.

On November 2, 1990, the General Counsel filed directly with the Board a Motion to Transfer Proceedings to the Board and for Partial Summary Judgment. In support of his motions, the General Counsel contends that the Respondent's answer fails to conform to the requirements of Section 102.56(b) and (c) of the Board's Rules and Regulations, except insofar as the Respondent's answer raises the issue of the discriminatees' interim earnings, which the General Counsel concedes have been put in dispute. The General Counsel submits that in disputing the premises on which the General Counsel's backpay figures are based, the answer, other than as it pleads with respect to interim earnings, fails to state the Respondent's position as to the premises on which backpay figures should be based and fails to furnish appropriate supporting figures. Specifically, the General Counsel requests that the following portions of the 23-paragraph specification be deemed to be admitted as true without taking evidence: paragraphs 1, 3, 4, 6, 7, 8, and 11 in their entirety and paragraphs 9, 12(a), (b), (c)--22(a), (b), (c), and 23, except insofar as those paragraphs raise the issue of the discriminatees' interim earnings.

On November 6, 1990, the Board issued an Order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Partial Summary Judgment should not be granted. On December 6, 1990, the Respondent filed a response. In the response, the Respondent states that its answer to the backpay specification is wholly sufficient under

Section 102.5(b) ⁵ of the Board's Rules and Regulations. It claims to have raised a genuine issue of fact as to the wages the discriminatees would have received had their employment not been interrupted. It further claims that under Section 102.24 of the Board's Rules and Regulations, affidavits or other documentary evidence are not required to show that there are indeed genuine issues for hearing. Consequently, it asks that the General Counsel's Motion for Summary Judgment be denied in all respects and the matters set down for a hearing.

The National Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

Ruling on the Motion for Partial Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states:

(b) Contents of answer to specification.---The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.---If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification but fails to deny any allegation of the specification

⁵ Sec. 102.5 does not have a part (b). The Respondent presumably intended to refer to Sec. 102.56(b).

in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The specification duly served on the Respondent states that, pursuant to Section 102.56 of the Board's Rules and Regulations, the Respondent "shall, within 21 days from the service of the Specification, file . . . an Answer to the Specification. To the extent that such Answer fails to deny allegations of the Specification in the manner required under the Board's Rules and Regulations and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true and respondent shall be precluded from introducing any evidence controverting them." The consequences of failure to conform to the rule are set out clearly and unambiguously.

We find that the answer is substantively deficient concerning those matters within the Respondent's knowledge. The general denials are insufficient because they do not fairly meet the substance of the allegations of the specification, nor do they set forth in detail supporting figures and alternative premises.⁶ Similarly, the assertions challenging the basis for the backpay periods and the gross backpay computations suffer from the same infirmities.⁷ Accordingly, we shall grant the General Counsel's Motion for Partial Summary Judgment and shall direct a hearing limited to issues related to interim earnings.⁸ Because we have found that the Respondent's general denials and assertions as to all other allegations in the specification are insufficient under Section 102.56(b) and (c) of the Board's Rules and

⁶ Sneva's Rent-A-Car, 270 NLRB 1316, 1317 (1984).

⁷ Honeycomb Plastics Corp., 296 NLRB No. 17, slip op. at 5, 6 (Aug. 17, 1989).

⁸ The Respondent's denials suffice as to interim earnings because such matters are not within the Respondent's sphere of knowledge. Dews Construction Corp., 246 NLRB 945 (1979).

Regulations, we deem the Respondent to have admitted those allegations to be true.

ORDER

It is ordered that the General Counsel's Motion for Partial Summary Judgment is granted except with regard to the allegations concerning interim earnings.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 3 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge for the purpose of taking evidence concerning interim earnings. The judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D.C. February 12, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD